

**Opinion No. 196.**

**Counties—School Districts—County  
Attorney, Mileage Fees to Be  
Paid by the County.**

HELD: Mileage expenses incurred by the county attorney in the performance of his duties on behalf of school districts must be borne by the county.

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November 19, 1937.

Mr. H. B. Landoe  
County Attorney  
Bozeman, Montana

Dear Mr. Landoe:

You have asked if the county is liable for mileage expenses incurred by

the county attorney on work in behalf of a school district within the county, or if the school district itself must stand such expense.

The county attorney is more than a mere county officer, his duties extend beyond the confines of the county and down into the subdivisions thereof. The county attorney is primarily an officer of the state, he must prosecute in the name of the state and on its behalf and he is, in this respect an assistant to the Attorney General, and under his supervision. (Section 4819, R. C. M. 1935; State ex rel. Nolan v. District Court, 22 Mont. 25, 55 Pac. 916.) In recognition of this principle, half his salary is paid by the state and half by the county for which he is elected. (Article VIII, Section 19, Montana Constitution.)

He is also the legal adviser of the county and all the subdivisions, the school districts, irrigation districts and townships. (Section 4819.) He is the legal adviser to the county superintendent and the school trustees. (Section 1328.) He must assist the board of school trustees of each district in his county in their bonding procedure. (Section 1224.23.)

For all these duties outside his obligations directly to the county, he receives no additional compensation, and must perform them as a part of his office. In other words, the county is merely a convenient subdivision for dividing up the legal problems of the state, and the county attorney is placed therein as a composite officer, taking care of all the problems that arise within that particular subdivision. He is attorney for all of them, but he receives his salary from the county and state only.

While the state, by the Constitution, pays one-half the salary, the burden of paying the legitimate expenses incurred by the county attorney falls on the county. This is true when he is acting on strictly county business and equally true when he is on business of one of the political subdivisions within the county. In incurring mileage expense on behalf of a school district, the county attorney would be required to submit his claim to the county commissioners, who would determine if this were a necessary and valid claim, as provided by Section 4465.11. If it is determined that such a trip was neces-

sary, then it would be a proper charge against the county and should be paid in accordance with Sections 4884 and 4884.1.